Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO *and* New York News, Inc. and New York Typographical Union No. 6, International Typographical Union, AFL-CIO. Case 2-CD-624

March 26, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by New York News, Inc., herein called the Employer, alleging that Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called IBEW, violated Section 8(b)(4)(D) of the Act.

Pursuant to notice, a hearing was held before Hearing Officer Karen P. Fernbach on October 29 and 30 and December 9, 1980. The Employer, IBEW, and New York Typographical Union No. 6, International Typographical Union, AFL-CIO, herein called ITU, appeared at the hearing and were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a New York corporation with its principal place of business in the city of New York, is engaged in the publication of the New York News, a daily and Sunday newspaper of general circulation. During the past year, in the course and conduct of its business operations, the Employer derived gross revenues in excess of $200,000 and purchased goods and supplies valued in excess of $50,000 directly from sources outside the State of New York. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that IBEW and ITU are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

In November 1979, the Employer installed the Log-E Scanner system to replace its photographic equipment which had been used to produce negatives utilized in the printing process. The newly developed, high voltage, electronically integrated system uses laser scanners to produce a negative-like image. Prior to the new equipment's installation, the Employer and IBEW signed a side agreement to their collective-bargaining contract wherein maintenance of the new system was assigned to employees represented by IBEW, the same employees who had maintained the photographic equipment. Immediately after installation, these employees began training on the new system. ITU protested the assignment and, on January 24, 1980, informed the Employer that it would arbitrate the assignment following the procedures outlined in its collective-bargaining agreement with the Employer. The Employer then sought IBEW participation in tripartite arbitration, but IBEW refused. On September 23, 1980, the Employer filed suit in the Federal District Court for the Southern District of New York, in which it requested an order compelling tripartite arbitration. Shortly thereafter, the Employer received a letter from IBEW which stated that, if the Employer engaged in arbitration over the work assignment, IBEW would "feel justified in taking any appropriate action, including striking and picketing." The Employer then filed the instant charge.[1]

B. *The Work in Dispute*

The work in dispute involves maintenance of the Log-E Scanner equipment consisting of two readers, one reader-writer, and a control panel located on the sixth floor of the Employer's Manhattan plant.

C. *The Contentions of the Parties*

The Employer contends that a jurisdictional dispute exists and that the work in dispute should continue to be assigned to employees represented by IBEW based on its collective-bargaining agreements with IBEW, the Employer's preference, employees skills and training, economy, and efficiency, and because the new equipment replaced the equipment and the type of maintenance work which had been performed by employees represented by IBEW.

[1] On November 20, 1980, the Employer withdrew its Federal suit because the dispute was before the National Labor Relations Board.

ITU asserted at the hearing that the work should be reassigned to employees it represents because of its collective-bargaining agreement, skills, and industry practice.

IBEW takes the position that it did not violate Section 8(b)(4)(D) of the Act because employees it represents were awarded the work by a specific collective-bargaining agreement, and that, in any event, employees it represents should continue performance of the work in dispute because of the Employer's preference, economy, and efficiency.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[2] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[3]

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements

Both Unions have collective-bargaining agreements with the Employer and neither is certified by the Board. ITU contends that its contract, which includes jurisdiction over maintenance of "composing room work," covers the work in dispute because the new equipment is located in the composing room. The record shows, however, that production of negatives has never been considered "composing room work." Furthermore, IBEW's contract includes jurisdiction over maintenance of "electrical and electronic wiring apparatus or equipment," which the work in dispute qualifies as, and the side agreement specifically grants maintenance of the work in dispute to employees represented by IBEW. Therefore, this factor favors awarding the work in dispute to employees represented by IBEW.

2. The Employer's past practice

There is no past practice because the work in dispute involves new equipment which has not been used previously, but which, functionally, replaced the previously used photographic equipment on which electrical maintenance work had been performed by employees represented by IBEW, and this weighs in favor of awarding the work in dispute to those employees. *Philadelphia Typographical Union, Local No. 2 (Philadelphia Inquirer, Division of Triangle Publications, Inc.)*, 142 NLRB 36, 42 (1963); *International Association of Machinists and Aerospace Workers, Local 225, District 13, AFL-CIO (McCauley Accessory Division, Cessna Aircraft Company)*, 246 NLRB 24 (1979).

3. Industry practice

The only evidence ITU offered on industry practice consists of a work assignment at the New York Times, where employees represented by ITU perform the maintenance on the portion of a Log-E Scanner system located in its composing room. However, the evidence shows that the New York Times system is radically different from the Employer's system. In fact, the Employer's equipment was tailormade to its specifications, and is the only system of its kind. Accordingly, this factor does not favor an award to either group of employees.

4. Skills and training

Although employees represented by ITU testified that they possess the skills which enable them to be trained to perform the work in dispute, they admitted that they had no knowledge of lasers or optics, which are part of the Log-E Scanner equipment. On the other hand, employees represented by IBEW historically have performed high voltage electrical maintenance work, and for the past 8 months[4] have received classroom and on-the-job training from the system's manufacturer; this combination of skill, experience, expertise on high voltage electronic equipment, and extensive training on the new equipment weighs in favor of awarding the work to them.

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[2] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[3] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

[4] The Employer stated at the hearing that the training period will continue for approximately 10 more months.

5. Economy and efficiency

The record establishes that, if the work in dispute were assigned to employees represented by ITU, the Employer would have to hire six additional employees and repeat for those employees the 8 months of training employees represented by IBEW already have received. Also, the Log-E Scanner system is an interrelated, integrated system with coordinated maintenance in three different locations, and ITU is claiming jurisdiction over only one location. Assignment to employees represented by ITU therefore would require performance by two different crafts reporting to different departments and thus complicate the coordination and chain of command on the maintenance of the equipment. Therefore, economy and efficiency favor awarding the work in dispute to employees represented by IBEW.

6. Union award

After a hearing held pursuant to the International Disputes Plan of the AFL–CIO constitution, Umpire William Gomberg issued a decision awarding all electronic work at the Employer and the New York Times to IBEW. Neither the Employer nor ITU participated in the hearing. This factor does not favor awarding the work to either group of employees.

7. Employer preference

The Employer assigned the work in dispute to employees represented by IBEW, and this weighs in favor of awarding the work to those employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by IBEW are entitled to perform the work in dispute. We reach this conclusion relying on IBEW's collective-bargaining agreement, skills, training, economy, efficiency, the Employer's preference, and the new equipment's replacement of work which had been performed by employees represented by IBEW. In making this determination, we are awarding the work in question to employees who are represented by IBEW, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees of New York News, Inc., who are represented by Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, are entitled to perform the maintenance of the Log-E Scanner equipment consisting of two readers, one reader-writer, and a control panel located on the sixth floor of the Employer's Manhattan plant.